

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

<b>IN THE MATTER OF:</b>	)	
	)	<b>DIVISION OF WATER</b>
	)	<b>POLLUTION CONTROL</b>
	)	
<b>WASTE MANAGEMENT, INC.</b>	)	
<b>OF TENNESSEE</b>	)	
	)	
<b>RESPONDENT</b>	)	<b>CASE NO. 07-066D</b>
	)	

**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, Director of the Division of Water Pollution Control,  
and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control (hereinafter the "division") by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "department").

**II.**

Waste Management Incorporated of Tennessee, (hereinafter the "Respondent") is a foreign corporation licensed to do business in Tennessee. The Respondent owns and operates Cedar Ridge Landfill (hereinafter the "site") in Marshall County, Tennessee.

Service of process may be made on the Respondent through its registered agent, CT Corporation System, 800 South Gay Street, Knoxville, Tennessee 37929.

### **JURISDICTION**

#### **III.**

Whenever the commissioner has reason to believe that a violation of the Water Quality Control Act of 1977 (hereinafter the "Act"), Tennessee Code Annotated (T.C.A.) § 69-3-101 et seq, has occurred or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as Chapters 1200-4-3–4 of the *Official Compilation: Rules and Regulations of the State of Tennessee*. Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director of the division any of the powers, duties, and responsibilities of the commissioner under the Act.

#### **IV.**

The Respondent is a "person" as defined by T.C.A. § 69-3-103(20) and, as herein described, has violated the Act.

## **V.**

Vickrey Spring, Vickrey Branch, and East Fork Globe Creek, referred to herein, are “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. In accordance with Department Rule 1200-4-4, “Use Classifications for Surface Waters,” these water bodies have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

## **VI.**

T.C.A. § 69-3-108 requires a person to obtain coverage under a permit prior to discharging any substance to waters of the state, or to a location from which it is likely that the discharged substance will move into waters. Coverage under the Tennessee Multi-Sector General Permit for storm water discharges associated with industrial activities (hereinafter the “TMSP”) may be obtained by submittal of a Notice of Intent (NOI).

## **FACTS**

## **VII.**

On August 29, 2006, the Respondent submitted a NOI to the division for coverage under the TMSP for storm water discharges associated with industrial activity. On August 31, 2006, a Notice of Coverage was issued to the Respondent with the assigned Tracking Number TNR051563. Under the permit the Respondent is authorized to “discharge storm

water runoff associated with industrial activity”. Storm water discharges from the site drain to East Fork Globe Creek, in Marshall County, Tennessee.

Requirements of the TMSP include, but are not limited to, developing a Storm Water Pollution Prevention Plan (SWPPP), performing Quarterly Visual Examinations of Storm Water Quality and retaining examination records, maintaining Best Management Practices (BMPs) to reduce levels of pollutants present in storm water discharges associated with industrial activity, and the annual monitoring and reporting of concentrations of specified pollutants in storm water discharges from the site.

## **VIII.**

On January 4, 2007, division personnel conducted a Compliance Evaluation Inspection (CEI) at the site to determine compliance with the requirements of the TMSP. A number of violations were observed, including conditions of pollution in a spring and sinkhole located onsite.

The south slope of an area at the site known as Phase 3 exhibited severe erosion due to a lack of adequate Erosion Prevention and Sediment Control (EPSC) measures. It was observed that sediment from the south slope had migrated across a haul road and into an spring channel near storm water outfall SW-1. This spring channel drains to a sinkhole, and both the spring channel and the sinkhole were inundated with sediment. The sinkhole has previously been shown by dye testing to be hydrologically connected to the Vickrey Spring, which drains to the Vickrey Branch. In May of 2002, discharge of pollutants (sediment) to this same spring channel and sinkhole resulted in the issuance of Director’s Order 02-015D.

## **IX.**

On January 26, 2007, the division issued a Notice of Violation (NOV) to the Respondent detailing the violations and deficiencies observed during the January 4, 2007, CEI. The NOV instructed the Respondent to immediately take all necessary corrective action bring the site into compliance with the Act. The NOV further included a request that copies of the current SWPPP for the facility, including inspection and maintenance documentation, as well any modifications made to the SWPPP since January of 2004 be submitted to the division for review, in order to complete the CEI. In addition, the NOV instructed the Respondent to submit copies of the Comprehensive Site Compliance Evaluations, Quarterly Visual Examinations of Storm Water Quality, analytical results of Annual Storm Water Monitoring, and Notifications to the division for all Storm Water Sampling cut-off concentration exceedances, all for the period from January 2004 through December 2006.

## **X.**

On February 5, 2007, the division received a response to the request for additional information contained in the January 26, 2007, NOV and completed the document review that was part of the CEI begun on January 4, 2007.

The document review revealed a number of violations and deficiencies, beginning with the SWPPP. The site map did not reflect actual conditions at the site, and did not depict the additional acreage of a large borrow area that had been created to obtain soils, a site feature that presented a severe risk of sedimentary contamination to storm water runoff. EPSC measures installed at the site are required to be accurately depicted on the SWPPP site map, which they were not. Likewise, EPSC measures depicted on the SWPPP

site map are required to be installed at the site, which they were not. The permit requires that the SWPPP be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the potential for the discharge of pollutants to waters of the state. The onsite review of the sampling locations for Outfall No.3 demonstrated that the samples were not being collected at the sampling points indicated in the SWPPP.

The Annual Comprehensive Site Compliance Evaluations for the years 2004 through 2006 were reviewed and were deemed to be inadequate, and therefore were not in compliance with permit requirements. The Quarterly Visual Examinations of Storm Water Quality reports did not contain the information outlined in the SWPPP that would be collected for each storm event that is monitored, and were also found to be inadequate.

A review of the Annual Storm Water Monitoring Reports for the period of 2002 through 2006 revealed that the cut-off concentrations for Aluminum and Magnesium had been exceeded each of those years. The permit requires that the division be notified when a cut-off concentration is exceeded, along with an explanation of what caused the exceedance and the corrective actions that would be taken to prevent future exceedances of the cut-off concentration. This required notification was submitted to the division for the year 2002, but not for the years 2003, 2004, and 2006, as is required by the permit.

Storm water runoff sampling was not conducted in 2005. The 2005 report claimed that there was no discharge during the monitoring period, but Quarterly Visual Examinations of Storm Water Quality were conducted on July 11, 2005, and December 28, 2005. Analytical sampling and Quarterly Visual Examinations require the same storm

event criteria, which means the required storm water sampling could have been performed, but was not.

## **XI.**

On February 21, 2007, the Respondent submitted a revised NOI to the division which included the additional acreage of the borrow pit area.

## **XII.**

On February 26, 2007, the division issued the CEI summary to the Respondent. The CEI summary detailed the violations and deficiencies observed during the initial site review as well as those discovered during the subsequent document review. The CEI summary/NOV required that an updated SWPPP be submitted to the division in order to bring the facility into compliance with the terms and conditions of the TMSP.

## **XIII.**

On April 26, 2007, the division issued a report entitled “Water Quality Impacts from Cedar Ridge Landfill to East Fork Globe Creek in Marshall County.” This report was prepared in response to a request made by the Respondent’s consultant that a review be made of East Fork Globe Creek’s status as an impaired stream on the state’s 303d list. As stated in the report, the division determined that East Fork Globe Creek continued to be impaired, and that the site was a specific source of pollutants to the stream.

## **VIOLATIONS**

### **XIV.**

By causing a condition of pollution and by failing to comply with the requirements of the Tennessee Multi-Sector General Permit for storm water discharges associated with industrial activities, the Respondent has violated T.C.A. §§ 69-3-108(b) and 69-3-114-(a)(b).

§ 69-3-108 states, in part:

- (b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:
  - (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
  - (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
  - (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

§ 69-3-114 states, in part:

- (a) It is unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in Section 69-3-103 (22), unless such discharge shall be due to an unavoidable accident or unless such action has



been properly authorized. Any such action is declared to be a public nuisance.

- (b) In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

### **ORDER AND ASSESSMENT**

#### **XV.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-107, 109, 115–16, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondent:

1. As soon as possible, but no later than 30 days of receipt of this Order, the Respondent shall implement appropriate Best Management Practices to assure compliance with the terms and conditions of the permit and to prevent conditions of pollution. Erosion Prevention and Sediment Control measures designed by a professional engineer or other qualified professional shall be included in the Best Management Practices to be implemented. Documentation that Best Management Practices have been implemented is to be sent to the Water Pollution Control manager at the Columbia Environmental Field Office (CL-EFO) at 2484 Park Plus Drive, Columbia, TN 38401, and to the manager of the Enforcement and Compliance Section (E & C) of Water Pollution

Control at 6<sup>th</sup> Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1534

2. The Respondent shall maintain appropriate Best Management Practices to assure the reduction of pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of the permit.
3. The Respondent shall, within 45 days of receipt of this Order, submit an updated SWPPP for review and approval to the Water Pollution Control manager at the CL-EFO and a copy to the E & C manager at the addresses above.
4. The Respondent shall, within 30 days of receipt of this Order, submit a Corrective Action Plan (CAP) detailing how the affected spring channel and sinkhole will be adequately protected from additional sedimentary intrusion, and what measures will be taken to restore the affected spring channel and sinkhole. The CAP shall be submitted for review and approval to the Water Pollution Control manager at the CL-EFO and a copy to the E & C manager at the addresses above.
5. The Respondent shall, within 45 days of receipt of written approval from the division, complete all actions required by the approved CAP. Documentation of completion shall be submitted to the Water Pollution Control manager at the CL-EFO and a copy to the E & C manager at the addresses above.

6. The Respondent is hereby assessed a CIVIL PENALTY in the amount of TWENTY-NINE THOUSAND DOLLARS (\$29,000.00), payable as follows:

- a. The Respondent shall, within 30 DAYS of receipt of this Order and Assessment, pay to the division SEVEN THOUSAND TWO HUNDRED FIFTY DOLLARS (\$7,250.00).
- b. The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division in the event the Respondent fails to comply with Item 1 above, to be paid within 30 days of default.
- c. The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division in the event the Respondent fails to comply with Item 2 above, to be paid within 30 days of default.
- d. The Respondent shall pay ONE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$1,750.00) to the division in the event the Respondent fails to comply with Item 3 above, to be paid within 30 days of default.
- e. The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division in the event the Respondent fails to comply with Item 4 above, to be paid within 30 days of default.


- f. The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division in the event the Respondent fails to comply with Item 5 above, to be paid within 30 days of default.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of 30 days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on this 25<sup>th</sup> day of June 2007.

  
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PAUL E. DAVIS, P.E.  
Director, Division of Water Pollution Control

### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the director at the address below a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment.

If the required written petition is not filed within thirty (30) days of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§ 69-3-109, 115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 et seq of the Uniform Administrative Procedures Act, and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible

for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made payable to “Treasurer, State of Tennessee,” and sent to the Tennessee Department of Environment and Conservation, Division of Water Pollution Control - Enforcement & Compliance Section, 6th Floor L&C Annex, 401 Church Street, Nashville, TN 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, at the address above. All payments and correspondence should include the Respondent’s name and case number as shown on the first page of this Order and Assessment.